



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-11,8875

June 15, 1962

Honorable Edward A. McDermott
Director, Office of Emergency Planning
Executive Office of the President

Dear Mr. McDermott:

On May 24, 1962, you requested our decision upon certain questions arising under the airline passenger tariff provisions which, for transportation wholly within the continental United States, require the payment of liquidated damages to an airline by a passenger who fails to use or cancel confirmed reserved space on one of its flights and require payment of liquidated damages by the airline if it fails to provide a passenger with confirmed reserved space. Specific conditions for such payments are set forth in the Air Traffic Conference of America, Local and Joint Passenger Rules Tariff No. PR-4, effective May 1, 1962.

The situation which prompted your request involved three employees of your Office each of whom was paid \$40 by the airline on which they were traveling because that airline failed to accommodate them on a flight for which they had confirmed reserved space.

Your questions, which are not limited to the disposition of money paid by an airline but cover the liability for charges upon failure of a passenger to use or cancel confirmed space, are as follows:

- "1. If an officer or employee, on official business and because of the conduct of such business is prevented from using the confirmed space, is he or the Federal Government liable for the penalty?
- "2. If an officer or employee, on official business, but because of any reason not directly attributable to Government business is late or fails to use his confirmed space, is he or the Federal Government liable for the penalty?
- "3. Who is entitled to the three checks in question where the airline was at fault? If the Government is entitled to the three checks, in what fund shall they be deposited?

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"1. Would your answers to the above questions be any different if each of the individuals involved had paid cash instead of traveling on a T. R.?"

Necessary costs of the travel of Government employees on official business are allowable under the applicable statutes and regulations. Therefore, when the penalty (liquidated damages) referred to in your first question is charged against a passenger who fails to use or cancel confirmed reserved space under provisions of the carrier's tariff, travel funds of the Government agency concerned would be available to pay those charges if they were unavoidable in the conduct of official travel, or were incurred for reasons beyond the traveler's control and acceptable to the agency concerned. On the other hand, an employee who for reasons other than the performance of official business, except for reasons beyond his control and acceptable to the agency concerned, fails to use or cancel a confirmed reserved space is himself liable for any penalty (liquidated damages) resulting from such failure. See sections 1.1 and 1.2 of the Standardized Government Travel Regulations. Your first and second questions are answered accordingly.

An individual traveling on official business may be reimbursed the additional expenses caused by unavoidable delays under the applicable statutes and regulations. Thus, if a carrier is liable under its tariff provisions for liquidated damages, the Government stands to be damaged by the carrier's default. Furthermore, an employee is prohibited from accepting payments from private sources as a result of the performance of official duties, 36 Comp. Gen. 268. Therefore, our opinion is that the Government is entitled to the payments received by the individuals in question. In the absence of a statutory provision which authorizes the deposit of payments received by a Government agency to a specific appropriation such payments are for deposit to miscellaneous receipts. Your third question is answered accordingly.

Since the liability of the Government to pay the cost of official travel of its employees is not dependent upon the use of Government Transportation Requests the answers to your first three questions would not be different if cash is used to pay air fares rather than transportation requests.

Sincerely yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

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